

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA)	
)	
Plaintiff,)	
)	
vs.)	No. 4:10-CR-119 CEJ (TIA)
)	
LELAND BEASLEY)	
)	
Defendant.)	

**DEFENDANT'S RESPONSE IN OPPOSITION TO GOVERNMENT'S MOTION TO
REOPEN EVIDENTIARY HEARING**

Comes now Leland Beasley, Defendant (Defendant), by and through his attorney, Assistant Federal Public Defender Nanci McCarthy, and requests this Court to deny the *Government's Motion To Reopen the Evidentiary Hearing* in this cause. In support thereof, Defendant states to the Court the following:

1. On August 4th, 2010 defendant filed Motions to Suppress Evidence and Statements. Subsequently, the Government filed their response in opposition to such motions.
2. On August 30th, 2010 the Court held an evidentiary hearing and the Government was granted the opportunity to present evidence as desired regarding the search and seizure of the defendant, his belongings and the taking of his statements during the investigation of this cause.
3. During such hearing, in additional to other evidence, the Government presented evidence, and Government witnesses were cross examined, regarding the nature and circumstances of the interrogation of Mr. Beasley on January 19th, 2009.

4. Subsequent to the hearing, each party filed post hearing briefs and a responses to the opposing party's briefs.

5. On November 23rd, 2010 a status conference was held and the Court requested additional briefing on alleged violations of the defendant's Sixth Amendment right to counsel on January 19th, 2009.

6. At the status conference on November 23rd, 2010, The Government requested leave to reopen the evidentiary hearing prior to either party filing additional briefs. The Government filed a written request to reopen the hearing on November 24th, 2010.

7. Defendant states that the Government bears the burden of proving that all items seized and all statements taken from the Defendant were done so without violating any of the Defendant's Constitution Rights. The Government has been given ample opportunity to present any evidence desired at the original motion hearing on August 30th, 2010.

8. Allowing the Government to reopen the evidentiary hearing would provide the Government with unfair opportunity to correct deficiencies in the evidence which could have been presented during the original hearing and analyzed in post hearing briefs and would cause undue prejudice to the defendant.

9. The district court is not obligated to accept additional evidence; the decision to reopen the suppression hearing lies within the district court's discretion. *United States v. Tzakis*, 736 F.2d 867 (2nd Cir.1984).

10. Courts have denied requests to reopen evidentiary hearings when such request does not raise any new substantive issues to which the parties have previously been given ample opportunities to address. *U.S. v. Gill*, 513 F.3d 836 (8th Cir. 2008) .

11. Courts consider factors such as whether the moving party could has newly discovered evidence and whether, through due diligence, the party could have developed the evidence at the original hearing. United States v. Oates, 445 F. Supp. 351, 353 (E.D.N.Y.1978).

WHEREFORE, for the foregoing reasons, Defendant prays this Court deny the *Government's Motion To Reopen the Evidentiary Hearing* and to rely on the evidence as supplied to this Court as analyzed in all briefings to be filed by the parties.

Respectfully submitted,

/s/Nanci H. McCarthy

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ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that on November 30th, 2010, the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon Robert F. Livergood, Assistant United States Attorney.

/s/Nanci H. McCarthy

NANCI H. MCCARTHY

Assistant Federal Public Defender